IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 897 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHERBANU W/O RATANSHA RSTOMJI KAVRANA & 1 - Petitioner(s)

Versus

BHIKHABHAI DAHYABHAI VAGHRI - Respondent(s)

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Appearance :

NOTICE UNSERVED for Petitioner(s) : 1 - 2.
NOTICE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 06/10/2005

ORAL JUDGMENT

1. At the outset, it is required to be noted that the present Special Civil Application was filed by the learned advocate Shri H.L.Patel but during the pendency

of the present Special Civil Application unfortunately, he has died and therefore, the Office issued notices upon the petitioners at the addresses mentioned in the petition. However, it is reported that said notices upon the petitioners are unserved with the remarks that the petitioners left. This is a mater of the year 1987. Under the circumstances, this Court has decided the present Special Civil Application on merits on the basis of the material available on the record.

2. In this petition under Article 227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order passed by the Gujarat Revenue Tribunal dated 22.8.86 passed in Revision Application No.TEN.B.S.273/82 in allowing the said Revision Application quashing and setting aside the order passed by the Deputy Collector Land Reforms (Appeals), Valsad dated 22.1.83 and restoring the order passed by the Mamlatdar & ALT, dated 20.5.82 in declaring the respondent as a tenant under Section 32(1-B) of the Bombay Tenancy Act.

3. The dispute is with regard to the land bearing Survey No.855 admeasuring 15 Gunthas of land situated at village Udvana. It appears that originally in the village

form No.7/12 the name of the respondent herein was there, however, subsequently, he was dispossessed from the aforesaid land and the Mamlatdar & ALT, started proceedings under Section 32(1-B) of the Act and after recording the evidence and hearing the parties, by its order dated 20.5.82 held that the respondent herein was entitled to restoration of the aforesaid land under Section 32(1-B) of the Act. Being aggrieved and dissatisfied with the order passed by the Mamlatdar & ALT, dated 20.5.82, the petitioners preferred appeal before the Deputy Collector Land Reforms (Appeals), Valsad and the Deputy Collector Land Reforms (Appeals), Valsad by its order dated 22.1.83 allowed the said appeal and set aside the order passed by the Mamlatdar & ALT, dated 20.5.82. Being aggrieved and dissatisfied with the order passed by the Deputy Collector Land Reforms (Appeals), Valsad dated 22.1.83, the respondent herein preferred Revision Application before the Gujarat Revenue Tribunal being Revision Application No.TEN.B.S.273/82 and the Gujarat Revenue Tribunal by impugned judgment and order dated 22.8.86 allowed the said Revision Application and set aside the order passed by the Deputy Collector Land Reforms (Appeals), Valsad and restored the order passed by the Mamlatdar & ALT. Being aggrieved and dissatisfied with the judgment and order passed by the

Gujarat Revenue Tribunal dated 22.8.86 passed in Revision Application No.TEN.B.S.273/82, the petitioners have preferred the present Special Civil Application under Article 227 of the Constitution of India.

4. It appears from the pleadings and memo of the petition that the Gujarat Revenue Tribunal has materially erred in holding that the respondent herein was cultivating the land in question. I have gone through the judgment and order passed by all the authorities below inclusive of the judgment and order passed by the Gujarat Revenue Tribunal in which on appreciation of evidence, the Gujarat Revenue Tribunal has held that prior to 1955-56 the respondent herein was cultivating the land in question and his name was in the village form No.7/12 and the entry was deleted only on 14.11.56. The Tribunal has also considered that there was no application for surrender of the tenancy rights by the respondent herein but the Talati on his own only made entry in the record of right and the said proceedings were not according to Section 15 of the Bombay Tenancy Act. The Gujarat Revenue Tribunal has also considered that as the respondent herein was in a legal possession of the land prior to 1955-56 and therefore, proceedings under Section 32(1-B) of the Act are applicable. On appreciation of evidence

the Gujarat Revenue Tribunal has come to the conclusion that the respondent herein was cultivating the land prior to 15.6.55 and he was dispossessed without following any procedure as required under Section 15 of the Act and there was no valid surrender by the tenant and therefore, he is entitled to the benefit of Section 32(1-B) of the Act and therefore, the Gujarat Revenue Tribunal has rightly set aside the order passed by the Deputy Collector Land Reforms (Appeals), Valsad and has rightly restored the order passed by the Mamlatdar & ALT. In this petition under Article 227 of the Constitution of India there is no jurisdictional error, much less an error of law, committed by the Gujarat Revenue Tribunal which comes for the interpretation by this Court exercising powers under Article 227 of the Constitution of India. While exercising the powers under Article 227 of the Constitution of India, this Court is not required to re-appreciate the evidence on record.

5. For the reasons stated above, there is no substance in the present Special Civil Application and the same is required to be dismissed and is accordingly dismissed. Rule is discharged, however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.